IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7810 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE JUDICIAL BAILIFF ASSOCIATION

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7810 of 1998

MR JA ADESHRA for Petitioner No. 1

MR PRADIP BHATE A.G.P. for Respondent No. 1

MR JB PARDIWALA for Respondent No. 2

LAW OFFICER BRANCH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 13/04/2004

ORAL JUDGEMENT

This petition is filed by the members of the

Association of the Class-III employees working as Bailiffs in the Civil Court. According to them, essentially they are required to discharge duties of serving summons, notices, orders etc., on the litigants as per the direction of the Court. However, so far as the Criminal Courts are concerned because of the paucity of the Hawaldars, work of all remaining incharge of the mudammal articles of different criminal cases is entrusted to them. According to them, vide Circular bearing No. B/1457/80 issued by the High Court, duties of Hawaldars who belong to Class-IV service are prescribed. Item No. 5 prescribes that Hawaldars will be incharge of the mudammal articles brought from the mudammal room to the Court room in a Criminal trial. The petitioners have, therefore, relied on item No. 5 of the said Circular to make a grievance before this Court that Hawaldars will be entrusted this work and they should not be called upon to be incharge of the mudammal articles of the criminal trial.

1.1. It appears from the record of this petition that before approaching this Court by way of this petition, the petitioners association had made detailed representation to the High Court making the same grievance and request was made that Bailiffs may not be burdened with the additional duty of having the custody of mudammal articles. It appears that the High Court appreciated the difficulty expressed by the Bailiffs and took up the matter with the State Government. Mr. Pardiwala, learned advocate appearing for respondent no. 2 - the Registrar of the Gujarat High Court, has drawn my attention to the communication addressed to the Secretary to the Government of Gujarat dated 19th January, 1995, by the Joint Secretary on the subject. In the said letter request was made for creation of certain additional post in Class-III and Class-IV service for the subordinate Courts in the State. Consolidated statement showing the additional post in Class-III and Class-IV service proposed for the subordinate Courts in the State was annexed. The annexed statement shows that request for creation of six posts of Hawaldars for the subordinate Courts was made. The petitioner was accordingly informed about the request made to the State Government for creation of the post so as to redress their grievance. Since the Government did not do anything in the matter, vide letter dated 6th July, 1995 again request was made to expedite the creation of the post of Hawaldars. It appears from the record of this petition, as well as letter written by the Additional Registrar dated 4th April, 1998 to the President of the Gujarat State Judicial Bailiff Association that the request by the High

Court was made in respect of the District Courts at Amreli, Bhavnagar, Valsad, Junagadh, Kutch and Surendranagar. Mr. J.B. Pardiwala learned advocate appearing for respondent no.2 is directed to place these letters on the record by filing appropriate affidavit. Mr. J.A. Adeshra learned advocate appearing for the petitioner and Mr. Pradip Bhate learned A.G.P. appearing for respondent no.1 have no objection to Mr. Pardiwala filing such affidavit. It is stated by respondent no.2 that respondent no.1 was regularly being reminded of the approved post of the six Hawaldars in the aforesaid six District Courts. However, the said request is till today not acceded to by the State Government. In view of the fact that almost nine years have already passed, no decision on the issue has been taken by the State Government. Mr. Pradip Bhate learned A.G.P. appearing for respondent no.1 was called upon to file affidavit explaining why such long delay has been caused in creation of the post. In view of the direction of this Court, Mr. P.J. Patel, Under Secretary to respondent no.1 has filed his affidavit dated 1st April, 2004. He has stated that pursuant to the request made by the High Court for creation of 17 additional posts of Hawaldars, 11 additional posts of Hawaldars for the subordinate Courts were created by the State Government and six remain to be created. It is further stated that creation of New Services for the whole of the State of the different departments involves huge expenditure increasing the burden on the Public Exchequer. It is further stated that every year the State Government is required to create new service items for different departments and for this the budgetary estimates are required to be placed before the legislature. In short the say of the Government is that it is also required to look after creation of the other post in other departments and it could not, till this date, create six additional posts of Hawaldars. It is really a matter of regret that initially the request was made way back in the year 1995 and the Government was repeatedly reminded of the creation of the additional posts of Hawaldars for the subordinate judiciary. However, the aforesaid six District Courts have not been provided with the said facility.

2. Mr. Adesara learned advocate for the petitioner has further submitted that the Districts where the posts are in existence, the Bailiffs should not be saddled with the liability of being incharge of the mudammal articles of the criminal trial and that the work should be entrusted to the Hawaldars.

2.1. As against that, Mr. Pardiwala has expressed his apprehension that such course is not desirable because that may create feeling of dissatisfaction amongst the Bailiffs where the Hawaldars are not available and they are required to be incharge of the mudammal articles. According to respondent no. 2, unless all the posts are filled up with the help of the Government, the present position is required to be continued.

3. From the aforesaid discussion, it appears that the problem of the petitioners still persists because of the progress made by the Government in this direction is tardy. In fact when the request was made in the year 1995, it was incumbent upon respondent no.1 to meet the requirement of the High Court. It appears that for all these years, nothing has been done, except getting 11 posts of Hawaldars of the subordinate judiciary. It appears that with the establishment of the Fast Track Courts, even the present strength of the Hawaldars would prove helplessly inadequate. In the instant case, the Government is required to take urgent steps to fulfill the request made by the High Court in the year 1995 and create posts for aforesaid District Courts at the earliest.

4. In view of the aforesaid, respondent no. 1 is directed to accede to the request of the High Court and create six posts of Hawaldars for the District Courts at Amreli, Bhavnagar, Valsad, Junagadh, Kutch and Surendranagar on or before 31st December, 2004. Further, respondent no. 2 is directed to reconsider the request made by the petitioners association to the fact that the District Courts in which the posts of Hawaldars are already existing, the work of custody of the mudammal articles be withdrawn from the Bailiffs and be given to the Hawaldars. For that purpose the petitioner is directed to make appropriate representation within a period of one month and if such representation is made, respondent no. 2 will take appropriate decision thereon within a period of two months from the date of the receipt of the representation.

With the aforesaid direction, the petition is partly allowed. Rule is made absolute to the above extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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